

MARK HICKS,  
  
Plaintiff,  
  
vs.  
  
TRINET HR III, INC.,  
  
Defendant.

Complaint and authentic.” *Phillips v. Pitt Cnty. Mem’l. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009); *see also Lorenzo v. Rumsfeld*, 456 F.Supp.2d 731, 734 (E.D. Va. 2006), *aff’d*, 225 F.3d Appx. 165 (4th Cir. 2007) (“Where, as here, Plaintiff’s judicial complaint relies on informal and formal administrative complaints, these documents may be considered in ruling on a motion to dismiss, without converting the Rule 12(b)(6) motion into a Rule 56 motion.”).

Plaintiff has the burden of establishing the court’s subject matter jurisdiction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Moreover, Plaintiff must carry this burden by a preponderance of the evidence. *See Hamm v. United States*, 483 F.3d 135, 137 (2d Cir. 2007).

Defendant argues that Plaintiff’s REDA claim is untimely because he failed to file the Complaint within 90 days of the issuance of his Right-to-Sue letter. A civil action under REDA “shall be commenced by an employee within 90 days of the date upon which the right-to-sue letter was issued.” N.C. Gen. Stat. § 95-243(b). The Commissioner issued its right-to-sue letter to Plaintiff on July 15, 2019. The letter warned: “**THIS IS YOUR 90 DAY RIGHT-TO-SUE LETTER.** Pursuant to N.C. Gen. Stat. § 95-243, if you intend to pursue a lawsuit, you must file a civil action in superior court within ninety (90) days of the date of this letter. If you fail to file a civil action within this time, your right to sue the Respondent under the provisions of REDA is lost.” (Doc. No. 4-1, p. 9). The Complaint was filed on May 6, 2020, more than ninety-days after July 15, 2019.

Plaintiff has submitted the Affidavit of his counsel in which his counsel states that although the Right-to-Sue letter was sent by certified mail to his law firm, counsel did not receive the letter due to mishandling by an employee of its landlord. Apparently, the landlord provides administrative services to its tenants, which include opening and sorting mail. The

employee signed for the letter but did not notify the firm as required and the letter was later discarded.

While these events are certainly unfortunate, the fact remains that the Complaint was filed more than 90 days after the Right-to-Sue letter was issued. Without citing any case law, Plaintiff argues that the Court has discretion to allow Plaintiff's REDA claim to continue. However, the plain language of the statute does not leave any room for the Court's discretion. *See Telesca v. SAS Institute, Inc.*, 516 S.E.2d 397 (N.C. Ct. App. 1999) (affirming the trial court's dismissal of plaintiff's REDA claim where it was filed ninety-four days after the right-to-sue letter was issued).

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Plaintiff's Fourth Cause of Action is hereby GRANTED.

Signed: July 28, 2020

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

